IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

Crl.Rev.Pet.No. 44 of 2000()

CRA.76/1992 of ADDL.SESSIONS COURT, KOTTAYAM
CC.51/1991 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM

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REVN. PETITIONER(S):

PRAKASH, S/O.SIVARAMAN,
KUNNUMPURATHU VEEDU
HOUSE NO.36 VIII(WARD)
POONJAR PANCHAYATH,
THEKKEKARA VILLAGE,
POONJAR.

BY ADV. SRI.B.N.SHIVSANKAR

RESPONDENT(S):

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI.C.K.SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/04/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.R.P. No.44 of 2000

Dated 4th day of April, 2007.

O R D E R

Revision petitioner was convicted and sentenced to undergo rigorous imprisonment for three years for offence under Sections 392 and 34 of Indian Penal Code. Revision petitioner is the first accused in the case who was tried along with second accused by Magistrate's Court. In appeal, the conviction and sentence were confirmed. Hence, this revision.

2. According to prosecution, on 17.12.1990 in the night (at 3.30a.m), accused 1 and 2 in prosecution of their common intention to commit robbery wrongfully restrained PW1 in a lane near P.W.D office and revision petitioner (accused 1) threatened PW1 with fear of death stating that he will be killed and he committed theft of M.O.2 watch. Second accused snatched away Rs. 1,400/- from pocket of PW1's shirt by force and thereby committed offence under Sections 392 and 34 IPC. Prosecution examined PWs 1 to 10 and marked Exhibits P1 to P8 and M.O.1 to M.O.2 to prove its case. The accused pleaded innocence.

3. On an analysis of the evidence on record, both the courts below found that prosecution proved its case. PW1 gave evidence consistent with the prosecution case. PW2 is the person who

identified revision petitioner while he was found running away from the scene. According to lower appellate court, evidence of PW1 establishes that while he was proceeding through the lane, revision petitioner along with second accused wrongfully restrained him and put him to fear of instant death and forcibly removed M.O.2 watch worn by him and that second accused took away Rs. 1,400/- from his shirt pocket. PW1 identified M.O.1 as the shirt and M.O.2 as the watch which was stolen. There is no reason to disbelieve the evidence of PW1 and both the courts below rightly relied upon the same to prove the offence.

4. The court below also relied upon the evidence of PW10 Circle Inspector of Police who arrested the petitioner and from whom watch was seized under the mahazar Ext. P2. PW3 is the attestor to the mahazar. The evidence of PW10 reveals that accused was arrested on 22.12.1990 within five days of the incident and the stolen watch M.O.2 was seized from his possession. Court below has therefore drawn a presumption under Section 114(a) of Evidence Act, in favour of prosecution. I do not find any illegality or impropriety in doing so.

5. However, it appears from the revision memo that there is some discrepancy in the evidence of PWs 3 and 10 regarding the time of arrest. PW3 stated that the arrest was at 2 p.m, while PW10 deposed that the petitioner was arrested at 1.30 a.m on 22.12.1990. PW3 admitted his signature in Ext. P2. The alleged discrepancy cannot be blown out of proportion to throw out the prosecution case as a whole. Even if the evidence of PW3 is discarded, there is no reason to reject the version given by PW10 Circle Inspector against whom no motive was alleged to falsely implicate the petitioner in this case.

6. I do not find any reason to interfere with the conviction as well as sentence which is only consistent with the gravity of offence.

This revision petition is dismissed.

K. HEMA, JUDGE

smp